IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.316 OF 1994.

Kadir Usman Mujawar
res. at Ramraj,
Taluka : Alibag,
District : Raigad. .. Appellant
(Original Plaintiff)

vs.

1. Dattatraya Bhaskar Sinkar,
deceased, through his legal heirs

1A. Indira Dattatraya Sinkar
1B. Vijay Dattatraya Sinkar
1C. Anil Dattatraya Sinkar
1D. Ashok Dattatraya Sinkar
1E. Sulochana Dattatraya Sinkar
1F. Shaila Dattatraya Sinkar
1G. Manjula Dattatraya Sinkar
1H. Mona Dattatraya Sinkar
1I. Nisha Dattatraya Sinkar

2. Ashok Dattatraya Sinkar

3. Anil Dattrataya Sinkar

all residents of Ramraj,
Tal : Alibag,
Dist : Raigad. .. Respondents.
(Original Defendants)

alongwith

SECOND APPEAL 315 OF 1994

Kadir Usman Mujawar .. Appellant

(Original Plaintiff)

V.s

1. Dattatraya Bhaskar Sinkar

2. Ashok Dattaram Sinkar

3. Anil Dattatraya Sinkar .. Respondents.
(Original Defendants)

alongwith

SECOND APPEAL 317 OF 1991

Kadir Usman Mujawar .. Appellant
(Original Plaintiff)

V.s

1. Dattatraya Bhaskar Sinkar

2. Ashok Dattaram Sinkar

3. Anil Dattatraya Sinkar .. Respondents.
(Original Defendants)

Mr. Sachin S. Punde with Rajiv Patil for the appellant.

Mr.P.G.Kerwande for respondent Nos.1, 2 and 4 to 9.

CORAM : S.R.SATHE, J.

DATED :18TH AUGUST, 2004.

JUDGMENT :

1. These three appeal are filed by Kadir Usman Mujawar, the original plaintiff in Civil Suit no.11 of 1982, 80 of 1982 and 4 of 1986 against the common judgment and order passed by the Additional District Judge, Raigad, Alibag in

Civil Appeal Nos.54 of 1987, 55 of 1987 and 87 of 1987 respectively, whereby the order of dismissing the suits of plaintiff passed by the Civil Judge, Senior Division, Alibag was confirmed and all the three appeals were dismissed. (For the sake of convenience hereafter the parties shall be referred to as plaintiff and defendants.)

2. The brief facts which are necessary for the purpose of these second appeals are as under:

. Tne defendant nos.2 and 3 are the sons of defendant no.1. The plaintiff's father and defendant no.1 formed a partnership firm by name B.B.Sinkar and U.J.Mujawar Company in the year 1949 and had started business of cutting jungle wood. Both the partners had equal share in the said partnership. In the year 1966, the father of the present plaintiff was ill and unable to cary on the business. Hence his son Kadir i.e. the plaintiff started representing his father in the partnership business. In the year 1974, defendant no.1 and plaintiff decided to start rice mill. The defendant no.3 at the relevant time was

unemployed educated person. The defendant no.1 suggested that if the said business is started in he name of defendant no.3 it would be possible to get financial help from the government under the scheme regarding unemployed educated persons. They therefore decided to start the said business and also agreed that Sinkar & Mujawar Company should invest initial amount for purchase of land etc. Accordingly they actually purchased the land with the help of funds of Sinkar & Mujawar Company for that business as per the say of defendant no.1. Plaintiff also obtained certain loan for construction of shade required for the rice mill. Plaintiff also spent some other amount to the tune of Rs.39,519/- for the said business. The plaintiff and defendant Nos.1 and 3 were accordingly doing the business of rice mill. In the year 1979 plaintiff asked defendant no.1 to repay the amount which he had spent. However, the defendant no.1 gave evasive reply and finally denied to make any repayment. So, as per the custom and precedent of village Ramraj, where the parties to the suit were residing and doing business decided to prefer the dispute between

them to panchayat. Accordingly, both the parties placed their grevience before the panchayat and then again it was referred to larger panchayat of village Ramraj. The said panchayat was consisting of 20 respectable members from the village. The members of the panchayat tried to settle the dispute, but could not suceed. Ultimately, after perusing all the documents and accounts the panchayat held that a particular amount is due from the defendants 1 to 3 to plaintiff. The defendants accepted the resolution but subsequently turned down the order of said panchayat and requested that the matter be referred to some Chartered Accountant. For selecting the Chartered Accountant, again a small committee was formed and ultimately it was decided to refer the dispute to a Chartered Accountant by name Baliram Baikar. The said C.A. then called upon both the parties, verified all the documents and accounts and ultimately came to the conclusion that certain amounts were due from the defendants to the plaintiff. It was found that in all Rs.90,000/- were due. The parties, therefore , decided to enter into an agreement and on that day

the defendants paid Rs.25,000/- to plaintiff. The defendants executed an agreement on 20.12.1980 and accepted their liability to pay. As per the said agreement balance amount of Rs.65,000/- was to be paid by instalment. The first three instalments were not paid by the defendants to plaintiff. Plaintiff, therefore, isued notice dated 27.4.1982 to the defendants. Inspite of the same the defendants did not pay the same. Hence the plaintiff filed special Civil Suit No.11 of 1982 and claimed Rs.38,000/- + interest on the basis of agreement exhibit 63. As the defendants also failed to pay the subsequent instalments, plaintiff filed Special Civil Suit No.80 of 1982 and 4 of 1986 for recovery of the amount due from defendants under the agreement.

. The defendants 1 to 3 filed their written statment at exhibit 19 in Special Civil Suit No.11 of 1982 and denied that there was any agreement to start rice mill business between plaintiff and defendant. The defendants contended that defendant no.3 is sole owner of the rice mill business and for that purpose he had raised loan

from banks. They also contended that at no point of time they had accepted any liability before panchayat or before the C.A. According to the defendants Mr. Baikar had never attended the matter with due care and caution and there was collusion between the panchayat, plaintiff and Mr. Baikar. They prepared a false document of agreement fixing the liability on defendants and the panchayat gave threats that if the defendants refused to sign the agreement the villagers would boycott them. So according to the defendants under the compulsion and coercion the defendants signed the disputed agreement dated 20.12.1980 and contents of the agreement were infact never admitted by the defendants. They also contended that the plaintiff had never asked for settlement of account of partnership business within three years after 1976 and as such the suit was not maintainable. Hence on all these grounds the defendants prayed for dismissal of the suit. Similar contentions were taken in the other suits filed by the plaintiff.

. Considering the pleadings of the parties

the trial court framed issues in the above mentioned three suits. As the parties to all the three suits were same, and they were filed on the bsis of one agreement, parties passed joint pursis exhibit 55 and requested to record the evidence in suit no.11 of 1982 and to read the same in the other two suits.

. After considering the evidence adduced by both the parties the trial court came to the conclusion that plaintiff has failed to prove that the defendants have executed an agreement dated 20.12.1980 and accepted the liability. The trial court also denied the contention of the defendants that they executed an agreement in question due to undue influence and coercion. According to the trial court the agreement dated 20.08.1980 was not enforceable as it was in respect of amount barred by limitation and the acknowledgement was not within time. The trial court therefore dismissed all the three suits.

. Being aggrieved by the judgment and order passed by the trial court in the said suits, the

original plaintiff filed three seperate civil appeals. The appellate court, however, after hearing the arguments of both the learned advocates came to the conclusion that the order passed by the trial court was legal and correct. He, therefore, dismissed all the three appeals. The original plaintiff therefore challanged the said orders of the first appellate court by filing these three second appeals.

3. From the perusal of the record it appears that while admitting the appeals this court has passed the following order " Heard Counsel. The basic grounds (i), (ii) & (iii) are substantial. Particularly the ground one under section 25(3). Admitted". Grounds (i) to (iii) are as under :

> "(i) The substantial question of law involved in this Second Appeal is that, whether both courts below were correct in interpreting the provisions of section 18 of the Limitation Act, 1963, which provides for the effect of acknowledgement in writing. The learned judges erred in

coming to the conclusion that the suit claim is time bassed debt.

(ii) The substantial question of law involved in this Second Appeal is that, both the Courts below erred in interpreting the provision of Section 17 and Section 23 of the Indian Evidence Act.

(iii) Both the courts erred in interpreting provision of section 25(3) of the Indian Contract Act. The learned Judges did not appreciate the effect of section 18 of Limitation Act on own hand and Section 25(3) of the Contract Act on the other."

4. As the above mentioned three appeals are filed by one and the same person and common questions of law and fact are involved in the same, I am disposing of these three appeals by a common judgment.

5. Shri Rajiv Kulkarni, the learned Advocate

for the appellant/plaintiff has urged only one point before me. He submitted that the lower court has failed to appreciate the nature of the agreement exhibit 63. The lower court considered the said document as if it is an acknowledgment under section 18 of the limitation Act. In fact, both the courts below should have taken into consideration the provisions of section 25(3) of the Indian Contract Act (hereafter referred to as the Contract Act) and held that the defendants have accepted the liability under the agreement and should have decreed the plaintiffs suit. As against this Shri Karwande, the learned Advocate for the defendants supported the judgment and order passed by the first appellate court.

6. From the oral and documentary evidence adduced by both the parties, both the courts below have held that there was a partnership firm as alleged by the plaintiff and it appears that subsequently they had decided to start rice mill business. Not only that, careful reading of the judgments of both the courts below indicate that they have also held that agreement in question

exhibit 63 has been executed by the defendants and the same is not under any undue influence or coercion as contended by the defendants. However, according to the trial court it was necessary for the plaintiff to prove the contents of the said agreement independently by producing all the evidence with regard to the transactions mentioned in the agreement. It was also necessary for the plaintiff to produce the accounts and prove that particular amounts were actually due from the defendants. As the plaintiff did not adduce any such specific evidence it was held that the contents of the agreement are not proved. However, from the perusal of the plaintiffs deposition it is quite evident that the plaintiff has specifically stated that the dispute between the parties was referred to panchayat and thereafter the larger panchayat and then to chartered accountant and all of them had called upon the defendants and inspected the necessary documents and accounts and then only the amount which was due from the defendant was determined. He has also stated that accordingly agreement was executed and defendants signed the same in his

presence and witness Jayant Wagle was also present at that time. All this evidence of the plaintiff as well as the evidence of his witness is not at all shaken or shattered in the cross examination. Moreover, if we see the agreement exhibti 63 we find that it corroborates the version of the plaintiff. When the very purpose of the agreement was to reduce into writing the outcome of the accounts that were taken and the amount determined which was due from defendants to plaintiff and accordingly everything was mentioned in the agreement exhibit 63, the courts below have wrongly observed that it was necessary for the plaintiff to adduce independent evidence and to prove each and every item of the debt mentioned in the agreement independently. So, from the evidence of plaintiffs and his witness, coupled with the agreement exhibit 63 it is very clear that the defendants executed the said agreement and admitted the liability to pay the amount of Rs.90,000/- and infact paid Rs.25,000/- on the date of agreement and further agreed to pay the balance amount by instalments.

7. Though, the defendants contended that the said agreement was signed by them under compulsion and because of the partiality particularly of panchayat, it is very clear that they miserably failed to adduce any evidence worth the name to show that there was any influence or partiality of the panchayat people or of the C.A. or of any other person. Admittedly, the defendants are doing business for the last several years. Infact, they are respectable and influential persons. They were not at all on cross terms with any of the members of the panchayat . Though the verdict of the panchayat was not accepted by the defendants, as per his request, the matter was referred to the larger panchayat and finally to the chartered accountant. So, both the courts below rightly observed that the defendants have failed to prove that the agreement in question was executed due to undue influence or coercion. Once it is said that the defendants have failed to prove the contention of undue influence the plaintiff is entitled to get benefit under the agreement unless it is shown that the said agreement does not fall within the four corners of

section 25(3) of the Contract Act.

8. Both the courts below have observed that the agreement in question does not fall within the provisions of Section 25(3) of the Contract Act. It would be worthwhile to see what the Section says. It runs as follows :

> **Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.**- An agreement made without consideration is void, unless -
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> (1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation each other; or unless
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> (2) it is a promise to compensate, wholly or in part, aperson who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless
>
> (3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf to pay wholy or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.
>
> *illustration*

(a).....

(b).....

(c).....

(d).....

(e) A owes B Rs.1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs.500 on account of the debt. This is a contract."

9. From the above provision it is very clear that in order to fall the case under section 25(3)(e) of the Contract Act there must be an express promise made in writing, signed by the persons to be charged therewith to pay only or any part of the debt of which the creditor might have enforced payment , but for the law for the limitation of suits. It is not necessary that in such writing itself the consideration should have been described as past debt. When infact it is a past debt and was known to the debtor as such a barred debt, and knowingly he entered into agreement, it is valid consideration for the promise to pay under section 25(3) of the Contract Act.

10. Thus, if we see the agreement in question

it is very clear that it is pertaining to the debt i.e. the ascertained sum of money which was due from the defendants to plaintiff. From the contents of the agreement and in particular the dates given in respect of each transction it is very clear that the said debt was time barred, but only with that purpose the agreement has been executed. By no stretch of imagination it can be said that exhibit 63 is the acknowledgement as contemplated by section 18 of the Limitation Act, 1963. So, the entire approach of the courts below to the agreement in question treating it as acknowledgment is erroneous. On the contrary, all the essential ingredients required for application of section 25(3) of the Contract Act are fulfilled in the instant case. The defendants have clearly signed the agreement in question and given promise to pay the amount or the debt which was barred by limitation. So, exhibit 63 is infact an independent contract that was entered into between the plaintiff and defendants. The same is legal and valid and the plaintiff is entitled to recover the amount on the basis of the same.

9. In this view of the matter it is very clear that the approach of the courts below to the documents in question was wrong and as such they reached to a wrong conclusion that plaintiff is not entitled to recover the amount as alleged and dismissed the suit. The said order being incorrect and against the provisions of section 25(3) of the Contract Act, it has to be set aside.

. Appeal No. 316 of 1994, is allowed. The order passed by both the courts below is set aside. Regular Civil Suit No.11 of 1982 is decreed. The defendants 1 to 3 to pay plaintiff Rs.38,000/- and interest on the said amount at the rate of 9% from 20.12.1980 to 20.05.1982 and future interest on Rs.38,000/- at the rate of 6% per anum from the date of the suit till realisation of the amount.

. Appeal No.315 of 1984 is allowed. The order passed by both the courts below is set aside. Regular Civil Suit No.80 of 1982 is decreed. The defendants 1 to 3 to pay the plaintiff Rs.15,000/-(Rupees Fifteen Thousand

Only) and interest on the said amount from 20.02.1983 to 30.05.1983 at the rate of 9% per anum and future interest on the said amount at the rate of 6% per anum from the date of the suit till realisation of the amount.

. Appeal No.317 of 1986 is allowed. The order passed by both the courts below is set aside. Regular Civil Suit No.4 of 1986 is decreed. The defendants 1 to 3 to pay the plaintiff Rs.12,000/- (Rupees Twelve Thousand Only) and interest on the said amount at the rate of 9% per anum from 20.06.1982 to 30.06.1982and future interest on the amount of Rs.12,000/- at the rate of 6% per anum from the date of the suit till realisation of the amount.

(S.R.Sathe, J)

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